IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-12-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

HABEAS CORPUS PETITION NO.808 OF 2006

Tmt. Boopathy,
W/o. Raji @ Rajendran .. Petitioner

Vs.

1. The Commissioner of Police,
   Salem City, Salem

2. Government of Tamil Nadu,
   Rep. by its Secretary
   Prohibition and Excise Department,
   Chennai 600 009.

3. The Superintendent,
   Central Prison, Salem,
   Salem. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus calling for the records relating to the proceedings of the first respondent in C.M.P.No.5/GOONDA/Salem City/2006 dated 22.6.2006 against the detenu Susendiran, aged about 20 years and quash the same and consequently direct the respondents to produce the detenu, who has been now detained under Act 14/82 in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.Abudukumar Rajaratinam
For Mr.R. Rajan

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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J U D G M E N T

P.K. MISRA, J

Mother of the detenu has filed this Habeas Corpus Petition for quashing the detention order dated 22.6.2006 passed by the Commissioner of Police, Salem City, in exercise of power under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), hereinafter referred to as "the Act" read with Section 3(2) of the Act. The order of detention has been passed on the allegation that the detenu is found indulging in an activity prejudicial to the maintenance of pubic order and public peace.

2. The grounds of detention, which were served on the detenu, refer to two adverse cases, namely, Kannankurichi P.S. Cr.No.875/05, wherein offences under Sections 341, 302 IPC r/w. 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 were alleged to have been committed on 4.4.2005 by the detenu and Kannankurichi P.S. Cr.No.2593 of 2005, wherein offences under Sections 147, 148, 364, 506(ii), 302, 201 r/w.149 IPC., were alleged to have been committed on 19.12.2005 by the detenu and other accused persons. The detenu had been released on bail in both the cases. The immediate cause for passing the order of detention is for the alleged offence under Sections 392 read with 397 IPC., allegedly committed by the detenu on 8.6.2006 in Cr.No.977 of 2006 of Kannankurichi Police Station.

3. Learned counsel for the petitioner has assailed the validity of the order of detention mainly on two grounds. Firstly, it is submitted that the ground case on which the order of detention has been passed relates to the offences allegedly committed by the detenu under Sections 392 and 397 IPC and the incident being a solitary of that nature against an individual, it cannot be said to be an activity prejudicial to the maintenance of the public order and therefore the order of detention is vitiated. In support of such contention, learned counsel has placed reliance upon the decisions of the Supreme Court in 2003 SCC (Cri) 537 (DARPAN KUMAR SHARMA v. STATE OF TAMIL NADU AND OTHERS) and (2006) 3 SCC (Cri) 11 (R. KALAVATHI v. STATE OF TAMIL NADU AND OTHERS) and the Division Bench decision of this Court in 2005 M.L.J. (Crl.) 612(SMT. KAUSALYA v. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE, KANCHEEPURAM AND ANOTHER). The other contention of the petitioner is to the effect that the representation made on behalf of the detenu has not been disposed of expeditiously and at any rate there was undue delay in serving the rejection letter on the detenu.

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4. The relevant provision of the Act is extracted hereunder :-

> "3. Power to make orders detaining certain persons.- (1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest-offender or goonda or immoral traffic offender or sand offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
>
> (2) If, having regard to the circumstances prevailing, or likely prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:
>
> (Proviso to Section 3(2) is omitted as unnecessary) "

5. An analysis of the aforesaid provision makes it clear that the power to make a preventive order vests with the State Government. However, under Section 3(2), the State Government, may delegate such power to be exercised by a District Magistrate or a Commissioner of Police by passing appropriate order. It is not in dispute that in the present case, the power under Section 3(1) has been exercised by the Commissioner of Police as per the order dated 18.4.2006 delegating such authority.

6. The concerned authority under Section 3(1) of the Act is empowered to pass any order of preventive detention in respect of various categories indicated with a view to prevent such a detenu from acting in any manner prejudicial to the maintenance of public order. In the present case, such an order has been passed on the allegation that the detenu is a Goonda.

7. As per Section 2(1)(a)(iii) "acting in any manner prejudicial to the maintenance of public order" means - in the case of a goonda, when he is engaged, or is making preparations for engaging in any of his activities as a goonda, which affect adversely or are likely to affect adversely, the maintenance of public order.

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As per Section 2(1)(f) "goonda" means a person, who either by himself or a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

8. In the decision of the Supreme Court in (2006) 3 SCC (Cri) 11, which has been relied upon by the learned counsel for the petitioner, the order of detention was quashed by the Supreme Court as the grounds of detention referred to only one incident and there was no material to show that the detenu was habitually committing crime. After referring to the definition clause in Act 14/1982, the Supreme Court observed :-

> "9. A bare reading of the provision makes the position clear that in order to attract action in terms of Section 3 (1) of the Act, the detenu must be one who is a "goonda" as defined under Section 2(f) of the Act. Though in other preventive detention laws, even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention, being prejudicial to maintenance of public order. For the purpose of the Act the detenu has to be a "goonda" as defined under Section 2(f) of the Act."

The Supreme Court proceeded to observe as follows :-

> "13. The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See Ayub v. S.N. Sinha.)
>
> 14. From one single transaction though consisting of several acts, a habit cannot be attributed to a person."

9. We do not think that the ratio of the aforesaid decision can be made applicable to the facts of the present case.

10. In the present case, reference has been made to the alleged involvement of the detenu in two crimes allegedly committed during the month of April, 2005 and December, 2005. The main offence allegedly committed in these two separate cases was under Section 302 IPC., which comes under Chapter XVI of the Indian Penal Code. From the alleged involvement of the detenu in those offences, as per the definition clause, it can be said that the detenu was a Goonda within

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the meaning of such term as defined in Act 14 of 1982. The last incident, on the basis of which the order of detention was passed, is an offence under Section 392 and 397 IPC coming within the Chapter XVII. Again such an incident can be considered as a continuation of the activity of the detenu as a Goonda as per the definition clause. It is no doubt true that the nature of offence committed in the first two incidents was different from the last incident in the sense that in the first two incidents, the offence was against a human body, whereas in the last incident, the offence was essentially against the property, but nevertheless coupled with aggression against human body. For passing the order of preventive detention, the basic requirement is that the person to be detained should be a 'Goonda' as defined in the Act and it is necessary in the opinion of the detaining authority to pass an order to prevent such a Goonda from acting in any manner prejudicial to the public order. It is, however, not necessary that all the incidents relied upon by the detaining authority should be of similar crimes. Keeping in view the propensity of the detenu to commit offences coming within the Chapters XVI and XVII repeatedly, it cannot be said that the detaining authority has committed any illegality in coming to the subjective satisfaction that the detenu was a Goonda.

11. Once the detaining authority rightly came to the conclusion that the detenu was a Goonda, the next question was whether the detaining authority was justified (keeping in view the aspect of subjective satisfaction in mind) in concluding from the incident that the detenu was likely to act prejudicial to the maintenance of public order. Merely because the last incident, on the basis of which the order of detention was passed, was a different kind of offence as compared to the adverse cases, it cannot be said that the order of detention is based on a singular act. From the decision of the Supreme Court relied upon by the learned counsel for the petitioner [(2006) 3 SCC (Cri)11] it appears that the detaining authority had only referred to a singular act of the detenu in coming to the conclusion that the detenu was a Goonda and detention order was required. In view of the different factual scenario in the present case, in our opinion, the ratio of the said decision is not applicable.

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12. Learned counsel for the petitioner has also relied upon the decision of the Supreme Court reported in 2003 SCC (Cri) 537 (cited supra). In the said case, two adverse cases referred to by the detaining authority under Act 14 of 1982 were 379 IPC and the last incident, on the basis of which the detention order is passed, related to an offence under Section 392 IPC. By referring to the facts of that case, the Supreme Court came to the conclusion that the singular act of the detenu under Section 392 IPC did not justify the

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conclusion of the detaining authority and the order of detention was quashed.

13. From a careful reading of the aforesaid decision, it is apparent that the Supreme Court was of the view that the incident in the said case created a problem of law and order rather than a problem of public order and, therefore, the detention order was not justified. As observed by the Supreme Court in (2006) 3 SCC (Cri) 11 (cited supra), in order to pass an order of preventive detention under Act 14 of 1982, the appropriate authority is required to come to two conclusions, whether (1) detenu is a Goonda, and (2) it is necessary to prevent such person acting in a manner prejudicial to the maintenance of public order.

14. In the decision of the Supreme Court in Darpan Kumar Sharma's case it can be said that even though the detenu was a Goonda in the sense he had committed several offences coming within the Chapter XVII of the Indian Penal Code, such incidents, particularly the last incident on the basis of which the order of detention was passed, related to an incident involving law and order rather than public order. In the subsequent decision of R. Kalavathi's case, even though it could have been said that the incident related to the question of public order, since the offence committed was a singular offence by the detenu, the Supreme Court came to the conclusion that the detenu was not a Goonda and therefore the order of detention should not have been passed.

15. In the present case, as already analysed, it can be safely held that the detenu is a Goonda.

16. The next question is whether it can be said that the incident, on the basis of which the order of detention is passed, related to an issue of pubic order rather than the mere law and order.

17. It has been held in several cases that even a single instance can raise a question of public order and such question depends upon the nature of the offence committed, the background and the setting in which such offence is committed.

18. In the present case, as described in the grounds of detention, the detenu waylaid the victim and threatened him to take out money from the pocket and when the victim resisted, the detenu drew a soori knife and threatening him took money from the pocket of the victim. At that time, the victim raised alarm and hearing the same, the passerby people in the bus stop came to catch the detenu, but on seeing such persons, the detenu brandished his knife towards

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them and threatened by telling that whoever would try to catch hold of him would be stabbed to death. Because of such threatening, the people, who came to catch hold of him and the students going to ITI and schools were scattered and ran with fear. The shopkeepers hurriedly closed their shops out of fear and ran and at that time the detenu took a soda bottle from nearby shop and dashed it on the ground. The buses, autos and two-wheelers on the main road also came to a stand still and the detenu escaped with looted money.

19. Keeping in view the manner in which the offence was committed and particularly the follow up action by the detenu himself by threatening the people, it cannot be said that the incident related to mere law and order and did not relate to the question of public order. The incident dealt with by the Supreme Court in 2003 SCC (Cri) 537 (cited supra), even though was a similar offence in the sense that offence under Section 392 IPC had been committed, the setting and the background in that case were completely different.

20. Keeping in view the background and the setting as narrated in the grounds of detention, it cannot be said that the detaining authority by coming to a conclusion, that it was necessary to pass the order of detention in order to prevent the detenu from acting in a manner prejudicial to the maintenance of public order, has exceeded his jurisdiction, keeping in view the basic tenet of law that such order is essentially based on the subjective satisfaction of the detaining authority.

21. In our opinion, the ratio of the decision of the Supreme Court in 2003 SCC (Cri) 537 (cited supra) is not applicable as the factual scenario in the said case was different. Similarly the ratio of the decision of the Supreme Court in (2006) 3 SCC (Cri) 11 (cited supra) is not applicable as unlike in the present case the order of detention was based only on one incident and thereby it could not be said that the detenu was a Goonda. The main contention raised by the petitioner is therefore not acceptable.

22. The other contention raised by the petitioner relates to the question of delay in disposal of the representation and the subsequent service of such letter of rejection on the detenu.

23. From the materials on record, it appears that the representation was received on 31.7.2006 and remarks were called for on 1.8.2006. Thereafter the relevant authority received such remarks on 3.8.2006 and the remarks were received from sponsoring authority on 4.8.2006 and remarks were sent to the Government on 4.8.2006, which was received on 7.8.2006. The file was dealt with by the Under Secretary on 8.8.2006 and by the Minister also on 8.8.2006. The rejection letter was also prepared on 8.8.2006 and it was sent to the detenu on the very same day, but it was served on the detenu on

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14.8.2006. It appears that 12th and 13th August, 2006 were Saturday and Sunday, which are non-working days and, therefore, the letter was served on 14.8.2006. In such circumstances, it is difficult to accept the contention of the detenu that there has been any undue or unexplained delay in either dealing with the representation or serving the letter on the detenu.

24. For the aforesaid reasons, we do not find any merit in the Habeas Corpus Petition, which is accordingly dismissed.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Commissioner of Police,
   Salem City, Salem

2. The Secretary to the Government of Tamil Nadu,
   Rep. by its Secretary
   Prohibition and Excise Department,
   Chennai 600 009.

3. The Superintendent,
   Central Prison, Salem, Salem.

4. The Public Prosecutor, High Court, Madras

5. The Joint Secretary to Govt. of Tamilnadu,

   Public (Law & Order) Dept., Fort St. George,

   Chennai.

1 CC TO MR.R. RAJAN, ADVOCATE SR 63411

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